Remarks and Arguments:

Claims 1 to 9, 14 and 15 have been cancelled and new claim 16 is presented. The dependencies of claims 10, 12 and 13 have been suitably amended.

Accordingly, claims 10 to 13 and16 remain for consideration in this application. The above amendments and the following remarks are submitted as a full and complete response to the Office Action of 01/23/2007 and Advisory Action of 10/15/2007.

In rejecting the former claims in the Office Action of 7/9/2007, the Examiner cited US 2003/0121541A1 (Hilton et al.); US 6,932,489 (Sooferian); and US 4,980,574 (Cirrito). In the Advisory Action of 10/15/2007, the Examiner refused entry of Applicant's amendments of Ocotber 1, 2007 and asserted the rejection of claim 14 as anticipated by Sooferian and obvious in view of Hilton et al. and Cirrito. Applicant respectfully traverses the rejections with respect to new claim independent claim 16, for the reasons set out below.

Graham Factors

Although patentability is a matter of law, the court held that §103 required a determination of the following questions of fact to resolve the issue of obviousness:

1. The scope and content of the prior art;
2. The level of ordinary skill in the prior art;
3. The differences between the claimed invention and the prior art

Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966)

Applicant will now deal with each of these questions in turn with respect to new claim 16.

New independent claim 16

New independent claim 16 is directed to a portable garden power supply for powering an external device having a power cord. The garden power supply comprises, among other features, a massive body having an irregular shape resembling a natural rock and an external surface portion in the form of a planar face angled upwardly at an angle of about 45°. On the external surface portion, there is an exposed flat solar electricity-producing panel which generates an electrical current in the presence of solar radiation,

said flat solar electricity producing panel being angled upwardly at an angle of about 45°. A DC power outlet pluggably receives the power cord of the external device to provide DC power from said rechargeable battery to power the external device.

The invention of claim 16 provides a highly useful power supply. Some landscapes and gardens are quite elaborate, incorporating many features and accessories. There can be quite a problem if, for example, a gardener wants to incorporate a waterfall in the middle of a garden at a location that is distant from an outlet. How is the pump for this waterfall powered? Using a long extension cord from the pump to a distant outlet is quite unsafe if the extension cord is not buried in the ground and quite inconvenient if it is buried.

It would also be beneficial to generate this power by an efficient solar device. This is of course much more cost effective.

None of the cited references provide such a useful solar power outlet: not the home identification system of Hilton et al., not the stepping stone of Sooferian and not the irrigation system of Cirrito.

The invention of claim 16 provides a power supply having a DC outlet that can pluggably receive a power cord from an external separate device such as the exemplary pump. In this way, the power supply can be located close to the external device to be powered, mitigating the inconvenience and danger of a trailing power cord. But even further, the power supply is in the form of a massive stable base which can be selectively moved about from one location to another as the landscape design dictates. This is advantageous over systems using stakes or the like to support a solar panel; stakes must be secured into the ground to provide the needed support and must be dug out in order to move or relocate the device.

Even further, the massive stable base has a flat planar surface angled at 45° so that a solar panel can be secured thereto. The solar panel is then also angled at 45°, which is the median elevation of the sun. This angle and the fact that the power supply can be moved about further provides for the possibility of increased exposure to the sun, which in turn increases and improves the efficiency of the power supply itself. For additional efficiency, the power supply defined in claim 16 also includes a rechargeable battery. Clearly all of the features of the claimed power supply codependent to provide a highly useful power supply in the art of gardening and landscaping.

This power supply defined in claim 16 includes elements and interrelation of those elements that do not merely perform the function that each element performs separately.

It is noted that in the "Examination Guidelines for Determining Obviousness Under 35 USC 103 in view of the Supreme Court Decision in KSR International Co. v. Teleflex Inc." specifically provides that a showing that a claimed invention comprises elements in combination that do not merely perform the function that each element performs separately rebuts a rejection of obviousness.

It is submitted that none of the references teach or suggest the recitations of an external surface angled at 45° with an exposed flat solar electricity-producing panel angled at 45° for charging a rechargeable battery, and a DC power outlet for pluggably receiving the power cord of an external device to provide DC power from the rechargeable battery to the external device. It is submitted that the present claims are distinguishable over the cited art for at least these reasons.

Applicants submitted a full response on October 1, 2007, the contents of which are incorporated by reference herein.

Sooferian

Sooferian is directed to a stepping stone having a light source therein. The stepping stone of Sooferian is a self-contained unit; the light in the stepping stone is powered via a solar panel. As such, the system of Sooferian does not include a DC outlet for pluggably receiving the power cord of an external device as recited in present claim 16. Further, there would be no reason to add a DC outlet since the purpose of the system of Sooferian is to provide illumination of the stepping stones at night. The purpose of Sooferian is not to provide power to any external device as is the purpose of the presently claimed invention. Sooferian relates solely to a self-contained unit wherein the solar panel powers a light integral within the unit. In contrast, the present invention is directed to a power source for providing power from an "outlet" to an "external" device. This is a fundamental difference in use and application.

In the Advisory Action, the Examiner continues to assert that in Sooferian, lines 108 and 110 from one stepping stone to a second stepping stone as seen in Figure 9 are DC outlets. Sooferian only discloses that lines 108 and 110 are "electrical connectors".

Applicant cannot locate any reference to a DC power output nor to any output pluggably receiving a power cord from an external device as recited in new claim 16.

It is further noted that another significant difference is that Sooferian is not a massive stable body as defined in the present claims. As mentioned above, use of the massive stable body to support the solar panel permits relocation of the power supply as needed.

Further still, the Examiner has agreed that Sooferian does not teach that the solar panel can be angled as recited in the present claims (see Office Action of 07/09/2007, page 9). However Applicants further submit that the teachings of Sooferian also do not suggest or lead one skilled in the art to this recitation. This was argued at length in Applicant's response of October 1, 2007. In the Advisory Action of 10/15/2007, the Examiner failed to address this argument. Applicant reiterates the submission that there is no teaching or suggestion in Sooferian to angle the solar panel.

It is further drawn to the Examiner's attention that new claim 16 specifically recites that the solar panel is located on "an external surface portion in the form of a planar face angled upwardly at an angle of about 45°". This feature in conjunction with the massive solar body provides an advantageous system which can be moved and relocated as desired, for example to maximize sun exposure.

Clearly, Sooferian is deficient in teaching or suggesting at least the recitations of: 1) a massive body with an external planar surface with an exposed flat solar electricity-producing panel which generates an electrical current in the presence of solar radiation, said flat solar electricity producing panel being angled upwardly at an angle of about 45°; and 2) a DC power outlet pluggably receives the power cord of the external device to provide DC power from said rechargeable battery to power the external device.

With respect to the first recitation (45° solar panel), the solar panel of Sooferian is not angled at all and there is no teaching or suggestion that the panel could be angled for any reason. In addition, the device of Sooferian is not in the form of a massive body to provide support for the solar panel such that it can be moved about to various suitable locations in the garden.

With respect to the second recitation (DC power outlet pluggably receiving power cord), there is no indication that the generated power is DC and there is certainly no outlet for pluggably receiving a power cord.

Sooferian is clearly deficient in teaching every element recited in the present claims. The differences between Sooferian and the presently claimed invention are great. Further, there is no reason to modify the stepping stone of Sooferian to arrive at the presently claimed invention. The presently claimed invention recites elements and codependency of those elements to provide advantages not provided by, nor even appreciated by, the cited art. Thus, Applicant submits that claim 16 is distinguishable over Sooferian.

"[R]ejections on obviousness grounds cannot be sustained by mere conclusonary statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007) at 1741 (citing *In re Kahn*, 41 F.3d 977, 988 (Fed. Cir. 2006)). Based on this, the Examiner must provide a "reason" why one skilled in the art would modify the stepping stone of Sooferian to provide a massive base, with an exposed flat surface angled at 45°, with a solar panel angled at 45°, with a DC power outlet to pluggably receive a power cord from an external device. Applicant submits that based on the teachings of Sooferian, there is no reason why one skilled in the art would make so many modifications to the stepping stone of Sooferian to arrive at the presently claimed invention.

Hilton et al.

As mentioned above, new independent claim 16 recites a flat solar electricity producing panel being angled upwardly at an angle of about 45°. This feature was recited in former claim 5. Applicant submits that Hilton et al. does not teach this feature, and thus the claim is distinguishable over the cited art for at least this reason. It is noted that the Examiner did not reject former claim 5 as being anticipated by Hilton et al.

Thus, with respect to claim 16, it appears that the Examiner agrees that Hilton et al. does not teach an inclined solar panel angled at 45°. However, the Examiner continues to assert that that it would obvious of one skilled in the art to modify Hilton et al. to angle the panel.

The Examiner continues to rely on Figures 16 and 17 of Hilton et al. to support this argument. However it is submitted that the Examiner is reaching unsubstantiated conclusions from these Figures without referring to the related passages in the

description. The Examiner is under the impression that Figures 16 and 17 of Hilton illustrate that the solar panel 20 is "angled" and "curved" on surface 40.

In response, it is submitted that a reading of Hilton et al. specifically teaches that the solar cell 20 of Hilton et al. is exposed near the apex of top 45 of container 40 (see paragraph [0035] of Hilton et al.). It is unclear how the Examiner comes to believe that the solar panel is angled at 45° as recited in the present claims.

The Examiner is reminded that "[p]rior art reference must be considered in its entirely, i.e., as a whole, including portions that would lead away from the claimed invention." *W.L. Gore & Associates, Inc. v. Garlock, Inc.,* 220 U.S.P.Q. 303 (Fed. Cir. 1983). Thus the Examiner cannot rely solely on the drawings of Hilton et al. to support the argument of obviousness, and with a reading the corresponding text of Hilton et al., it is clear that Hilton et al. actually teaches away from the claimed invention.

In the interests of expedited prosecution, new claim 16 has further been amended for clarity to recite that the angled solar panel is located on an external surface of the massive body which is angled at 45°. This is feature is absolutely not taught in or suggested by Hilton et al. The top 45 having solar cell 20 of Hilton et al. is semi-circular or dome-shaped (paragraph [0035]). Thus, the solar panel is not located on an external surface angled at 45° as recited in claim 16. These elements and their interrelation results in an advantage not provided for, nor contemplated, by Hilton et al.

Applicant submits that one skilled in the art reading this passage in Hilton et al. would not be led to modify Hilton et al. to angle the solar panel to an incline of 45° as recited in present independent claim 16. Indeed, this passage in Hilton et al. actually teaches away from the presently claimed invention. By teaching that the solar cell 20 is located at the apex for the top 45, Hilton et al. are explicitly teaching away from the use of an angled exterior surface (without an apex) as recited in the present claims.

The Examiner is respectfully reminded that a reference that teaches away from a claimed invention cannot properly be used in an obvious rejection of the claimed invention. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).

As a further submission, Hilton et al. does not teach or suggest a power supply that generates power via a solar panel and outputs that power through a DC outlet which pluggably receives a power cord from an external device, as recited in claim 16. In particular it is noted that the power generated by the device of Hilton et al. is provided to

an integral device, namely the lighted panel. This is not an external, separate device as is recited in the present invention, and certainly Hilton et al. does not use a DC outlet which pluggably receives a power cord as recited in the present claims.

There are many differences between the presently claimed invention and Hilton et al. The purpose of Hilton et al. is not to provide power to any separate external device. The device of Hilton et al. does not provide a DC power outlet to receive a power cord from such a separate device. Further it is submitted that the device of Hilton et al. is not intended to be moved about in various desired locations; it is intended to remain at a single location, unlike the massive, stable body of the present invention.

There is no "reason" why one skilled in the art would modify the home identification unit of Hilton et al. to provide a massive base, with an exposed flat surface angled at 45°, with a solar panel angled at 45°, with a DC power outlet to pluggably receive a power cord from an external device. Applicant submits that the teachings of Hilton et al. actually teach away from making the many modifications to the home identification unit of Hilton et al. to arrive at the presently claimed invention. Accordingly, it is submitted that the invention of new claim 16 is distinguishable over the cited art.

Combination of Hilton et al. and Cirrito

The Examiner further argues that a combination of Hilton et al. and Cirrito would lead one skilled in the art to the claimed invention. However, it is submitted that Hilton et al. cannot be used in an obvious rejection of claim 16 since Hilton et al. specifically and clearly teaches away from the recitation of angling the solar panel, as argued in detail in Applicant's response of October 1, 2007.

As a further submission, neither Hilton et al. nor Cirrito teach or suggest a power supply in the form of a natural-looking garden element that generates power via a solar panel and outputs that power through a DC outlet to power an external device, as recited in claim 16. As mentioned above, Hilton et al. provides power only to an integral device, namely the lighted panel. This is not an external, separate device as is recited in the present invention.

Cirrito is directed to a solar irrigation system. Applicant submits that the devices of Cirrito are not natural garden features as meant within the context of present claim 1.

As mentioned above, the power supply of the present invention has the appearance of a naturally-occurring garden rock. Accordingly, the irrigation system of Cirrito is not a natural garden feature within the meaning of present claim 16. Cirrito does not attempt to disguise the system as a natural garden feature.

Further in Cirrito, a solar panel is used to generate DC power, which is then expressly converted to AC power. Accordingly, the electrical system of Cirrito incorporates an inverter. A careful study of Cirrito reveals that the system specifically uses an inverter that is tailored to comply with industry standard components, such as timers, which are powered by AC power. See column 4, lines 18 to 38. It is not taught or suggested that use of a DC power outlet, as recited in present claim 16, can be used.

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

Applicant submits that Cirrito actually teaches away from the use of a DC power outlet the pluggably receives an external device, since the system of Cirrito is specifically designed to power external AC devices as known in the art of irrigation systems.

Since both Hilton et al. and Cirrito would actually lead one skilled in the art away from the present invention, neither reference can properly be used in a rejection of the present claims.

Summary of patentability of new independent claim 16

The invention of claim 16 provides a highly useful power supply. This power supply defined in claim 16 includes elements and interrelation of those elements that do not merely perform the function that each element performs separately.

The invention of claim 16 provides a power supply having a DC outlet that can pluggably receive a power cord from an external separate. The use of a massive body to support the solar panel means the power supply can easily be moved and oriented as desired, for example to maximize exposure to the sun. The massive body has an irregular shape, but includes an external surface portion in the form of a planar face angled upwardly at an angle of about 45°, and on this external surface portion, is the solar panel angled at about 45° which is the median elevation of the sun. For additional efficiency, the power supply defined in claim 16 also includes a rechargeable battery. The power

generated therein can be supplied to any external, separate device with a DC power cord via a DC power outlet. Thus the power supply of the present invention provides a convenient, useful, versatile and efficient way to provide power to any device in a garden. Clearly all of the features of the claimed power supply are codependent to provide a highly useful power supply in the art of gardening and landscaping.

Such a device is not taught in any of the cited references. Indeed the benefits of such a device is not even contemplated or appreciated by the cited art.

It is submitted that the Applicant has shown that the claimed invention comprises a combination of elements that do not merely perform the function that each element performs separately and that none of the cited references teach or suggest these elements or the combination of elements to achieve the same device and advantages of the claimed invention. As such, it is submitted that the invention of claim 16 is both novel and unobvious over the cited art.

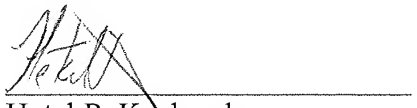
Dependent claims 10 to 13

With respect to the Examiner's remaining rejections of the dependent claims, Applicant submits that since dependent claims 10 to 13 depend either directly or indirectly from independent claim 16, and include all of the limitations of the parent claim. Therefore, the dependent claims are believed to be distinguishable over the cited references for at least the same reasons as those given to parent claim 16.

Accordingly, Applicant respectfully requests a timely Notice of Allowance be issued in this case.

If the Examiner has any questions concerning this application, the Examiner is requested to contact the undersigned at the telephone number of 613-236-9561, extension 302.

Respectfully submitted,



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